IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1905 to 1918 of 1993
With
FIST APPEAL No.1920 to 1980 of 1993
With
FIRST APPEAL NO.5683 to 5704 of 1995
With
FIST APPEAL No.509 to 523 of 1997
With
Cross Objection Nos.47 to 50 of 2003
In
First Apeal Nos.1977, 1978, 1980 & 1979 of 1993

HON'BLE MR.JUSTICE KSHITIJ R.VYAS

and

HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DEPUTY COLLECTOR & SPECIAL LAND ACQUISITION OFFICER

Versus

PUNJAJAI GAMAJI MAKWANA

Appearance:

MR HL JANI, AGP for Land Acquisition Officer
MR MUKESH R SHAH & MR G.H. BHATT for
original claimants and Mr.A.D. Oza, GP, for
respondents-State.

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE M.C.PATEL
Date of decision: 12/02/2004

COMMON ORAL JUDGEMENT
(Per : HON'BLE MR.JUSTICE M.C.PATEL)

1. All these appeals under section 54 of Land Acquisition Act read with section 96 of CPC are directed against the common judgement and award dated 29.4.1992 passed by the learned Extra Assistant Judge, Sabarkantha, Himmatnagar in Land Reference Case Nos.1180/88 to 1183/88, 1185/88 to 1190/88, 1193/88 to 1222/88, 1226/88 to 1234/88, 1236/88 to 1238/88, 1241/88, 1243/88 to 1253/88 and 1256/88 to 1267/88. First Appeal Nos.1905/93 to 1918/93 and 1920/93 to 1980/93 have been filed by the State, while First Appeal Nos.509/97 to 523/97 and First Appeal Nos.5683/95 to 5704/95 have been filed by the claimants for enhanced compensation. The respondents claimants in First Appeal Nos.1977/93 to 1980/93 have filed Cross Objection Nos.47 to 50 of 2003 claiming enhanced compensation in Appeal Nos.1977 to 1980 of 1993, which arise out of Land Reference Case Nos.1264/88 to 1267/88.

2. The lands in question are situated in village Bhadreshwar, Taluka Idar, District Sabarkantha. The said lands were acquired for the purpose of Guhai Jalagar Project under section 4 Notification, which was published in the gazette on 20th March 1986. The Land Acquisition Officer, by his common award dated 30th March 1988, offered compensation at the rate of Rs.165/- per Are for irrigated land and Rs.110/- per Are for non-irrigated land. The claimants were not satisfied with the said offer and at their instance references were made to the Reference Court under section 18 of the Act. They claimed compensation at the rate of Rs.1000/- per Are and also claimed separate compensation for wells and other superstructures standing on the lands.

3. The Reference Court consolidated 76 references in Land Reference Case No.1256/88 and after recording the evidence, oral and documentary, adduced by the parties, in all references, except Land Reference Case Nos.1264/88 to 1266/88 and 1267/88, awarded compensation at the rate of Rs.625/- per Are for irrigated land, Rs.425/- per Are for non-irrigated land and Rs.6/- per Are for Kharaba land. The Reference Court also awarded separate

compensation for the structures and wells which were on the acquired lands. In land Reference Case Nos.1264/88 to 1266/88, the Reference Court awarded compensation at the rate of Rs.1000/- per Are for irrigated lands, since according to the Reference Court, the lands had higher potentiality. In Land Reference Case No.1267/88 the Reference Court awarded compensation at the rate of Rs.100/- per Are for a small piece of land admeasuring 64 square metres bearing survey No.672/2.

4. The State has, therefore, filed appeals challenging the said common judgement and award awarding additional compensation and the claimants have filed appeals and cross objections for enhanced compensation as stated above.

5. It appears that under the same notification a large number of lands were acquired and the Land Acquisition Officer had passed a common award in all the cases. The present group of appeals arise out of the common award made by the Reference Court in 76 References. It is stated at the bar that 45 other references arising out of the same award passed by the Land Acquisition Officer in respect of the lands of the same village acquired for the same purpose under the same notification were disposed of separately by the same Reference Court by common judgement and award of the same date i.e. 29th April 1992 by awarding compensation at the same rate viz. Rs.625/- per Are for irrigated land and Rs.425/- per Are for non-irrigated land and separate compensation for wells and structures. The State had filed First Appeal Nos.1737 to 1781 of 1993 and the claimants had filed First Appeal Nos.5709 to 5729 of 1995 and 6960 to 6962 of 1995 against the said award passed in the aforesaid group of references. They were decided by the Division Bench of this Court on 16.3.1999. The Division Bench held that the claimants were entitled to compensation at the rate of Rs.814/- per Are. However, the Division Bench also held that the claimants were not entitled to separate compensation for wells and superstructures. The Division Bench, therefore, passed the final order as follows:

> "8. For the foregoing reasons the appeals filed by the State Government as well as the cross appeals filed by the claimants are partly allowed. The claimants would be entitled to compensation at the rate of Rs.814/- per Are. It is further held that the claimants shall not be entitled to any compensation for the wells situated in the acquired lands well as for the

super structures which were standing on the acquired lands and that part of the impugned award is set aside. Rest of the directions including directions given by the Reference Court in the award relating to payment of additional compensation under Section 23(1-A), Solatium u/s 23(2) and interest u/2 28 of the Act, are not disturbed and are hereby upheld. There shall be no orders as to costs. The office is directed to draw the decree in terms of this judgement."

6. The learned Advocate Mr. M.R. Shah appearing for the claimants contended that the claimants in the present cases are entitled to compensation at the same rate as was awarded by the Division Bench in First Appeal Nos.1737/93 and other allied matters which arose out of other references involving lands of the same village acquired for the same purpose under the same notification and which were disposed of by the Reference Court on the same date by separate judgement and award. The Division Bench in those cases held that the claimants were entitled to compensation at the rate of Rs.814/- per Are, but they were not entitled to compensation for the wells and superstructures situated on the acquired lands. Mr. H.L. Jani, learned AGP could not point out any circumstances or features which would distinguish the lands in the present cases from the lands in the earlier group. In our opinion, the claimants in the present group of cases are entitled to the same compensation as was awarded by the Division Bench in the previous group of cases. However, the lands of Land Reference Case Nos.1264 to 1267 of 1988 were dealt with separately by the Reference Court and the claimants in Reference Case Nos.1264 to 1266 of 1988 were awarded compensation at the rate of Rs.1000/- per Are and claimant in Reference Case No.1267 of 1988 was awarded Rs.625/- per Are for irrigated land and Rs.100/- per square metre for a small piece of land admeasuring 64 square metres. We see no reason to interfere with the award in these four references and the First Appeal Nos.1977 to 1980 of 1993 filed by the State against the award in the said four references and the Cross Objection Nos.47 to 50 of 2003 filed by the respondents-claimants are also liable to be dismissed.

7. In view of the above discussion, the appeals filed by the State, except First Appeal Nos.1977 to 1980 of 1993, and the Cross Appeals filed by the claimants in the said four appeals are partly allowed. The claimants are entitled to compensation at the rate of Rs.814/- per Are. It is further held that the claimants shall not be

entitled to any compensation for the wells situated in the acquired lands as well as for the superstructures which were standing on the acquired lands and that part of the award is set aside. The First Appeal Nos.1977 to 1980 of 1993 and the Cross Objection Nos.47 to 50 of 2003 filed by the respondents-claimants in Appeal Nos.1977 to 1979 of 1993 are dismissed. The rest of the directions including the directions given by the Reference Court relating to payment of additional compensation under section 23(1-A), Solatium under section 23(2) and interest under section 28 of the Act are not disturbed and are hereby upheld. However, it is clarified that the claimants are entitled to interest on the amount of solatium. There shall be no order as to costs. The Office is directed to draw the decree in terms of this judgement.

8. Mr. H.L. Jani, learned AGP, states that the entire amount of compensation under the award, including the compensation awarded for the wells and superstructures, has been deposited. Since the part of the award giving compensation for the wells and superstructures is set aside, the excess amount deposited by the Government, if any, shall be refunded.

[KSHITIJ R. VYAS, J.]

[M.C. PATEL, J.]

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